

REMARKS

In the instant restriction requirement, the Examiner requested an election of the following groups:

Group I: Claims 17-27, 31 and 31, drawn to a composition; and

Group II: Claims 28 and 29, drawn to a method of making a composition.

The applicants hereby elect **Group I, claims 17-27 and 31**, with traverse.

The Examiner stated that the inventions of Groups I and II are not related to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the technical feature common to the groups lacks inventive step. In particular, the Examiner stated that the dermatological composition of the claims has been described, with overlapping ranges, in DE 199 07 305 A1. The applicants respectfully traverse the Examiner's assertion.

First, the applicants respectfully submit that the present restriction requirement is improper as a matter of law. PCT Rule 13 permits the inclusion of both product claims and process claims specially adapted for the manufacture of the product. (See MPEP 1850 (III)(A)). In the present application, the process of claims 28 and 29 should be construed as being "specially adapted" for the manufacture of the product of Group I.

Second, the applicants submit that the composition does not lack inventive step in view of the prior art reference, DE 199 07 305. DE '305 refers to a product with at least three discrete phases which are optically distinguishable, which means that there are three or more layers of a product. The concentration of the ingredients in the claims is completely irrelevant because they are "0 – 100 %" in each case, irrespective of the type of ingredient, and the teachings of the reference must be enabled. Therefore, a real comparison is only possible with the examples, i.e.,

example 2.

Example 2 of DE '305 shows a relation of the 4 phases of 2 : 1 : 2 : 0.5. This is in relation to 100 % equal 36.4 : 18.2 : 36.4 : 9. Accordingly, this results in the following composition: Oil 36.0 % : Silicon 18.3 % : Water 33.45 % : Fluor carbon 7.1 %.

In comparison, the presently claimed invention teaches the following composition: 5 – 25 % by weight Oil or water; 10 – 85 % by weight Silicon polymer; and 0.1 – 10 % by weight Fluor carbon.

This carrier system is present in a cosmetic formulation in an amount of 1 – 40 %.

Concerning the maximum of 40 % this results in the following composition:

2 – 10 % by weight Oil or water

4 – 34 % by weight Silicon polymer

0.04 – 4 % by weight Fluor carbon.

This comparison shows that the amount of fluor carbon of 0.04 – 4 % does not overlap with 7.1 % of example 2 of '305. The same is true for example 1 of '305, which shows 5.54 %.

Furthermore, the use of the product in general is unknown but in any case it is not an emulsion, but a 3- or more-layered product with 3 or more differently coloured phases. There is no information about any oxygen content and a special partial pressure of 150 – 950 mbar O₂.

No person skilled in the art could take any information from '305 in order to arrive at the aim of the present invention, i.e. to supply more oxygen to the skin and for a longer time.

Claim 28 of the invention refers to a process for the preparation of the cosmetic or dermatological formulation with the oxygen carrier system and mentions special features of stirring, temperature, order of addition of the ingredients, stirring time etc. This product of claims

17-27, 30, 31 can only be produced by this detailed process. Otherwise the emulsion is not stable and the O₂ value drops much earlier than described in [0010]. Similarly, the claimed process can only be used for the preparation of the presently claimed product product.

Based on the foregoing reasons, the applicants respectfully request that the Examiner withdraw the present restriction.

The applicants reserve the right to prosecute the subject matter of the non-elected embodiment(s) in a divisional application. Moreover, applicants hereby reserve the right to rejoin embodiments, should rejoinder be appropriate.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires any further extension of time, Applicants respectfully requests that this be considered a petition therefore. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

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